

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB -LFG

RIO CHAMA STREAM SYSTEM

Section 7, Cañones Creek

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE CAÑONES CREEK SUBSECTION OF SECTION 7
OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Court pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Cañones Creek Subsection of Section 7 of the Rio Chama Stream System (“Cañones Subsection”).

I. DETERMINATION OF PRIORITY DATES.

A. Under the November 19, 2002, procedural order for the adjudication of surface water irrigation rights in Section 7, the adjudication of priority dates and irrigation water requirements will be initiated by the State following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in the Cañones Subsection for surface water irrigation use is now complete with the exception of the determination of priority dates and irrigation water requirements.

B. The State of New Mexico proposes the determination of the following ditch-wide priority dates for irrigated lands under pre-1907 ditches located in the Cañones Subsection as described below:

DITCH	PRIORITY DATE
Daggett Ditch No. 1	1902
Daggett Ditch No. 2	1902
Daggett Ditch No. 3	1902
Daggett Ditch No. 4	1902
Daggett Ditch No. 5	1902
Gentry Ditch No. 1	1902
Gentry Ditch No. 2	1902
Cañones Ditch No. 1	1861
Cañones Ditch No. 2	1861
Unnamed Ditch No. 1	1861
Unnamed Ditch No. 2	1861
Unnamed Ditch No. 3	1861
Unnamed Ditch No. 4	1861
Barranco Ditch	1861
Sanchez y Chavez Ditch	1877

C: The State of New Mexico proposes the determination of the following ditch-wide priority dates for lands in the Cañones Subsection that are irrigated under a final license issued by the Office of the State Engineer as described below:

DITCH	OSE License	PRIORITY DATE
Sargent Cañones Ditch	No. 1975	November 27, 1931
North Cañones Ditch	No. 1609	December 11, 1923
H.N.D. Ditch	No. 1544	December 1, 1922

D. The adjudication of water right priorities on community and private ditches in the Cañones Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of priority dates in Section 5 (Rio Gallina). *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rio Gallina Section of the Rio Chama Stream System* filed August 8, 2008 (Doc. No. 8752).

By November 15, 2011, the State of New Mexico (“State”) shall file a Motion For Approval of Form of Notice and Order to Show Cause with respect to priority date offers that the State intends to serve on individual subfile defendants in the Cañones Subsection. With this Court’s approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Cañones Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own water right and ditch, or (2) the priority dates proposed by the State for any other community or private ditch or surface water irrigation water rights in the Cañones Subsection. In the absence of an objection to the priority dates proposed by the State, the Court will enter a final order with respect to priority dates of all ditches and surface water irrigation rights in the Cañones Subsection. This determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants in the Cañones Subsection will be informed that they will have no other opportunity to protest priority date determinations of the ditches and surface water irrigation rights in the Cañones Subsection, and that subsequent *inter se* proceedings in the Cañones Subsection will not include the opportunity to object to those determinations.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Cañones Subsection to be served on the Commissioners of each community ditch in the Cañones Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform defendants and all persons having water rights of any type in the Cañones Subsection of their right to participate and offer evidence in support of objections to the proposed determination of priority dates for ditches and

surface water irrigation rights in the Cañones Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS.

A. The State proposes the determination of the following irrigation water requirements for irrigated lands under pre-1907 ditches located in the Cañones Subsection as described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 2.63 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 4.38 acre-feet per acre per annum.

The ditches in the Cañones Subsection to which these amounts would apply are those identified in paragraph I (B) above. The irrigation water requirements in the Cañones Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

B. The State proposes the determination of the following irrigation water requirements for lands in the Cañones Subsection that are irrigated under a final license issued by the Office of the State Engineer as described below:

Sargent Cañones Ditch:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.5 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.5 acre-feet per acre per annum.

North Cañones Ditch:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.5 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.5 acre-feet per acre per annum.

H.N.D. Ditch:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.3 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.17 acre-feet per acre per annum.

The irrigation water requirements in the Cañones Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

C. The adjudication of irrigation water requirements in the Cañones Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for ditches in the Cañones Subsection.

By November 15, 2011, the State shall file a Motion For Approval of Form of Notice and Order to Show Cause in connection with the determination of irrigation water requirements that the State intends to serve on individual subfile defendants in the Cañones Subsection. With this Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Cañones Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State for all surface water

irrigation use in the Cañones Subsection. In the absence of an objection to the irrigation water requirements proposed by the State, the Court will enter a final order with respect to surface water irrigation requirements in the Cañones Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water requirements in the Cañones Subsection, and that subsequent *inter se* proceedings in the Cañones Subsection will not include the opportunity to object to this determination.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Cañones Subsection to be served on the Commissioners of each community ditch in the Cañones Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform defendants and all persons having water rights of any type in the Cañones Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Cañones Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

D. The State shall coordinate the mailing and publication of the Notices regarding the determination of priority dates and irrigation water requirements so that these events and the stated deadlines therein occur in a coordinated manner. The two Notices will be combined in a single mailing.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to persons that are not a party to these proceedings. A

successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

E. After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Bruce D. Black", written over a horizontal line.

BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE